

THE ATTORNEY GENERAL OF TEXAS

CRAWFORD C. MARTIN
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

January 9, 1968

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Building
Austin, Texas

Opinion No. M-185

Re: Whether mileage reimbursement and \$10.00 per diem, as provided in Article 35.27, Vernon's Code of Criminal Procedure, is payable to a witness for attending the same court under subpoena in four separate cases on the same day, so that the witness would collect four mileages and \$40.00.

Dear Mr. Calvert:

In your recent opinion request to this office you present the question as to whether or not a witness is entitled to a fee and mileage in each case when subpoenaed to appear before the same court on the same day in more than one case.

Pertinent sections of Article 35.27, Vernon's Code of Criminal Procedure, read in part as follows:

"(1) Any witness who has been subpoenaed, or has been attached and given bond for his appearance before any court, or before any grand jury, out of the county of his residence, to testify in a case regardless of disposition of said case, and who appears in compliance with the obligations of such subpoena or bond, shall be allowed seven cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and ten dollars per day for each day he may necessarily be absent from home as a witness in such case.

"(2)

"(3) The witness shall make an affidavit stating the number of miles he will have traveled going to and returning from the court, by the nearest practical conveyance,

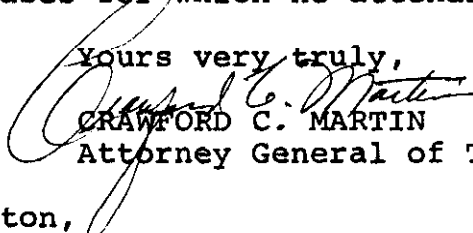
and the number of days he will have
been necessarily absent in going to
and returning from the place of trial;
... ." (Emphasis added)

Construing these sections together, it is our opinion that the Legislature intended to allow such a witness to charge only for the necessary mileage going to and returning from the location where court is being held and ten dollars per diem for each day he may necessarily be absent from home irrespective of the number of cases for which he may have been subpoenaed. This is consistent with previous rulings by this office that an attorney can collect only one fee for representing indigents for each day spent at court regardless of the number of indigents represented and regardless of the number of different courts in the county in which he may have to appear (See Attorney General's Opinion No. C-713 (1966)), and that a District Judge holding court in a county outside of his district and hearing cases pending in two or more District Courts in that county could collect compensation in addition to his salary of only \$25.00 for each day in court rather than \$25.00 a day additional for each court in which he appeared. (See Attorney General's Opinion No. C-339 (1964)).

S U M M A R Y

Where a witness attends the same court under subpoena in four separate cases on the same day, Article 35.27, Vernon's Code of Criminal Procedure, provides only for payment of mileage going to and returning from "the court" and per diem for each day he may necessarily be absent from home irrespective of the number of cases for which he attends "the court."

Yours very truly,


CRAWFORD C. MARTIN
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Prepared by Monroe Clayton,
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APPROVED:

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Hon. Robert S. Calvert, page 3, (M-185)

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